

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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MICHAEL V. LUJAN,

Case No. 3:21-cv-00343-MMD-WGC

Petitioner,

ORDER

v.

CHARLES DANIELS, *et al.*,

Respondents.

This case has been transferred to this Court by the United States Court of Appeals for the Ninth Circuit based on a finding that papers submitted to that Court by the Petitioner, Michael V. Lujan, should be treated as petition for writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 1.) Before the Court can proceed, Lujan will need to correct two important deficiencies to perfect his application for habeas relief.

First, Lujan's motion for leave to proceed *in forma pauperis* does not include the required attachments. (ECF No. 2.) Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, a petitioner must attach both an inmate account statement for the past six months and a properly executed financial certificate. Lujan has not complied with either requirement. The application is therefore incomplete. Second, the petition for writ of habeas corpus is not on this Court's approved form. (ECF No. 1-1.) A petition for writ of habeas corpus filed by a person who is not represented by an attorney must be on the form provided by this Court. See LSR 3-1.

Lujan will be given an opportunity to correct these defects by filing a renewed motion for leave to proceed *in forma pauperis* with the required attachments and an amended habeas petition on the Court's approved form.

III

1 In addition, Lujan should not only correct the noted deficiencies but also include all
2 claims for relief of which he is aware. That is, the Petition should contain all exhausted
3 claims and all unexhausted claims which Lujan believes might be a basis for granting
4 relief from the criminal conviction or sentence. An exhausted claim is one that has been
5 fairly presented to the Nevada Supreme Court. An unexhausted claim, on the other hand,
6 is one that has not been presented to the Nevada Supreme Court and, indeed, may not
7 have been presented to any court. If Lujan is aware of any claims and fails to include
8 them in his amended petition, the abuse of the writ rules may bar Lujan from ever raising
9 them in a federal court.

10 It is therefore ordered that the application to proceed *in forma pauperis* (ECF No.
11 1) is denied without prejudice. To maintain this action, Lujan must file, within 30 days, an
12 application for leave to proceed *in forma pauperis*, accompanied by a signed financial
13 certificate and a statement of his inmate account. The Clerk of the Court is directed to
14 send Lujan a blank application form for incarcerated litigants. In the alternative, Lujan
15 shall make the necessary arrangements to pay the filing fee of five dollars (\$5.00),
16 accompanied by a copy of this order.

17 It is further ordered that Lujan will also file, within 30 days, an amended petition on
18 the Court's approved form. Lujan must include in that amended petition any additional
19 claims for habeas corpus relief of which he is aware. The Clerk of Court is directed to
20 send Lujan two copies of the noncapital Section 2254 habeas petition form, one copy of
21 the instructions for the form, and a copy of the papers that he submitted in this action.

22 It is further ordered that if Lujan fails to respond to this order in the time and manner
23 provided above, the Court will conclude that he does not desire to pursue this matter, and
24 shall enter an order dismissing this case, without prejudice.

25 It is further ordered that the Court will decide Lujan's motion for appointment of
26 counsel (ECF No. 1-2) after the Court receives his amended petition.

27 The Clerk of Court is further directed to update Lujan's address to reflect his current
28 place of incarceration:

1 Southern Desert Correctional Center
2 P.O. Box 208
3 Indian Springs, NV 89070.

4 It is further ordered that Lujan's motion for default judgment (ECF No. 6) is denied.

5 DATED THIS 6th Day of October 2021.
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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE